

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FRANK DIPPOLITO,	:	
	:	
Plaintiff,	:	Civ. No. 13-0175 (RBK) (JS)
	:	
v.	:	MEMORANDUM AND ORDER
	:	
UNITED STATES OF AMERICA, et al.,	:	
	:	
Defendants.	:	
	:	

Plaintiff is a former federal prisoner who was previously incarcerated at F.C.I. Fort Dix, in Fort Dix, New Jersey. He is proceeding *pro se* with a civil rights complaint pursuant to *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).¹ Currently pending before the Court is defendants' the American Correctional Association (ACA) and James A. Gondles, Jr. motion to dismiss the first amended complaint. (Dkt. No. 17.) Plaintiff filed a motion to amend the first amended complaint on March 2, 2015 (*see* Dkt. No. 42.) that, at least in part, seeks to amend the claim raised against these two defendants. As plaintiff is seeking to amend his first amended complaint that ACA and Gondles are seeking to dismiss, their motion to dismiss will be denied without prejudice. ACA and Gondles of course would be entitled to raise another motion to dismiss should the Court grant plaintiff's motion to amend the first amended complaint as it relates to them (as well as oppose plaintiff's motion to amend).

¹ *Bivens* is the federal counterpart to 42 U.S.C. § 1983. *See Walker v. Zenk*, 323 F. App'x 144, 145 n.1 (3d Cir. 2009) (per curiam) (citing *Egervary v. Young*, 366 F.3d 238, 246 (3d Cir. 2004)).

Accordingly, IT IS this **3rd** day of **March**, 2015,

ORDERED that defendants', the American Correctional Association and James A. Gondles, Jr., motion to dismiss (Dkt. No. 17.) is denied without prejudice.

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge